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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,603	01/28/2002	Jorg Hein	4780-21	4012
7590	05/27/2004		EXAMINER	
KLAUS P. STOFFEL, ESQ. OSTROLENK, FABER, GERB & SOFFEN, LLP 1180 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8403				HORTON, YVONNE MICHELE
		ART UNIT	PAPER NUMBER	3635

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/058,603	Applicant(s)	HEIN ET AL.
Examiner	Yvonne M. Horton	Art Unit	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 3/26/04.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 12-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 12-21 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no support in the specification for the frame "surrounding" the push-fit portion.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12,14 and 19 stands rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #3,731,958 to OFFENBROICH. In regards to claim 12, the applicant is reminded that the manner in which a device is intended to be employed does not differentiate the claimed device from a prior art device satisfying the claimed limitations. Further, the claim is merely directed to a "connecting element". The transverse beam of an automobile is not a positive part of the claim limitation, but rather a subcombination of the entire system. Hence, this rejection is based solely on the connecting element alone. OFFENBROICH discloses the use of a connecting element including a frame (1,1',3,3') with parallel side walls (S) extending in an X-direction, and a push-fit body (2,2') formed thereon, see the marked attachment from the previous Official Action. The push-fit body (2) has a smaller cross-section than the frame (1,1',3,3') such that the connecting element has two different cross-sections in an X-direction and the frame (1,1') surrounds the outer/end portion of the push-fit body and

the frame (3,3') wholey surrounds the push-fit body (2,2'), column 2, lines 54-56 and column 3, lines 35-39. The push-fit body (2,2') further contains lengths (L) of the sidewalls (S) of the frame members (1,1',3,3'), see the enclosed marked attachment. Regarding claim 14, the push-fit body (2,2') forms a corner of the frame (1,1',3,3'). In reference to claim 19, the push-fit body is arranged to project out from the side wall (S) of the frame (1,1',3,3') in an X-direction.

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,059,056 to BANTHIA et al. In regards to claim 12, the applicant is reminded that the manner in which a device is intended to be employed does not differentiate the claimed device from a prior art device satisfying the claimed limitations. Further, the claim is merely directed to a connecting element. The transverse beam of an automobile is not a positive part of the claim limitation, but rather a subcombination of the entire system. Hence, this rejection is based solely on the connecting element alone. BANTHIA et al. discloses the use of a connecting element (120,130) including a frame (132) with side walls (colored red), see the marked attachment from the previous Official Action, extending in an X-direction, and a push-fit body (colored green) formed thereon; wherein the frame (132) surrounds an endmost portion of the push-fit body (colored green). The push-fit body (colored green) has a smaller cross-section than the frame (132) such that the connecting element (120,130) has two different cross-sections in an X-direction.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,731,958 to OFFENBROICH in view of US Patent #5,609,004 to

KREIS. As detailed above, OFFENBROICH discloses the basic claimed connecting element except for the use of a frame bracket. KREIS teaches that it is known in the art to provide a connecting element (3) with a frame bracket (11). Hence, it would have been obvious to one having ordinary skill in the art to provide the parallel side walls (S) of connecting element of OFFENBROICH with the frame bracket of KREIS in order to provide the connecting element with a means for attaching other device thereto. In reference to claim 16, the frame bracket (11) of KREIS includes arms (A) aligned with the side walls of the frame (3), see the marked attachment.

Claims 15,17-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,059,056 to BANTHIA et al. in view of US Patent #5,609,004 to KREIS. As detailed above, BANTHIA et al. discloses the basic claimed connecting element except for the use of a frame bracket and sleeve. KREIS teaches that it is known in the art to provide a connecting element (3) with a frame bracket (11). Hence, it would have been obvious to one having ordinary skill in the art to provide the connecting element of BANTHIA et al. with the frame bracket of KREIS in order to provide the connecting element with a means for attaching other device thereto. Regarding claims 17 and 18, KREIS further teaches that it is known in the art to provide a connecting element (3) with a sleeve (13,14). Hence, it too would have been obvious to one having ordinary skill in the art at sleeve of KREIS in order to provide an additional more discrete means for attaching another element or device thereto. The sleeves of KREIS lie in the corners of the connecting element. It would have been obvious to one having ordinary skill in the art to place the sleeves of BANTHIA et al., as modified by

KREIS, with the sleeves in the corners of the connecting element in order to provide the corners of the connecting element with additional rigidity while also allowing the connecting element to be discretely attached to other elements. In reference to claims 20 and 21, the bracket (11) of KREIS is positioned to one side of the connecting element (3), see figure 1. Hence, BANTHG et al., as modified by KREIS, would have the bracket positioned to one side of the connecting element of BANTHIA et al. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the frame (132) and the push-fit body (130) would project beyond the frame bracket.

***Response to Arguments***

Applicant's arguments filed 3/26/04 have been fully considered but they are not persuasive.

Regarding the applicant's argument that the reference of BANTHIA et al. does not teach a frame surrounding the push-fit member, as indicated above, clearly the frame of BANTHIA et al. "surrounds" the push-fit body. Unfortunately, without a detailed explanation of the frame "surrounding" the push-fit body, "surrounds" has been interpreted very broadly. Without the specification or the claims identifying what is truly meant by "surrounding", the claims were interpreted as a portion (the end or outer portion) of the push-fit body being surrounded by the frame. If perhaps, the applicant's desire a specified coverage for "surrounds" (i.e. the push-fit body fitting within the frame), the applicant should claim it as such. "Fitting within" can be interpreted totally

different from “surrounding”. Until then, the claim has been interpreted in the broadest since.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the push-fit body fitting within the frame) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Regarding applicant's argument that BANTHIA et al. teaches an end flange arranged outside the cross-section of the hollow core, the examiner is not certain what “end flange” the applicant is addressing. Until there is further clarification, an adequate response cannot be given.

In response to applicant's argument that OFFENBROICH does not teach the use of a support “for direct connection to a tubular part”, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the support directly connects with the tubular members or the push-fit body being hollow or the corner of a central frame) are not recited in the rejected claim(s). Although

the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Further, the applicant is reminded that the tubular members are not positively cited in the claims.

Regarding the applicant's argument that the joining members of OFFENBROICH are solid and would not be possible to incorporate recessed grooves therein, clearly OFFENBROICH teaches ribs (5) and recesses (4).

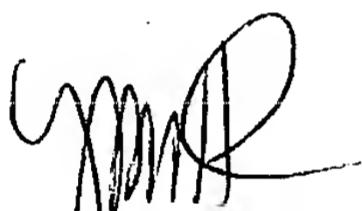
In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, KREIS is merely used to teach that it is known in the art to provide connector members with brackets. Hence, it is well within the general skill of a worker in the art to provide the connector of OFFENBROICH with the brackets of KREIS.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
YMH  
May 20, 2004

PATENTED MAY 8 1973

3,731,958

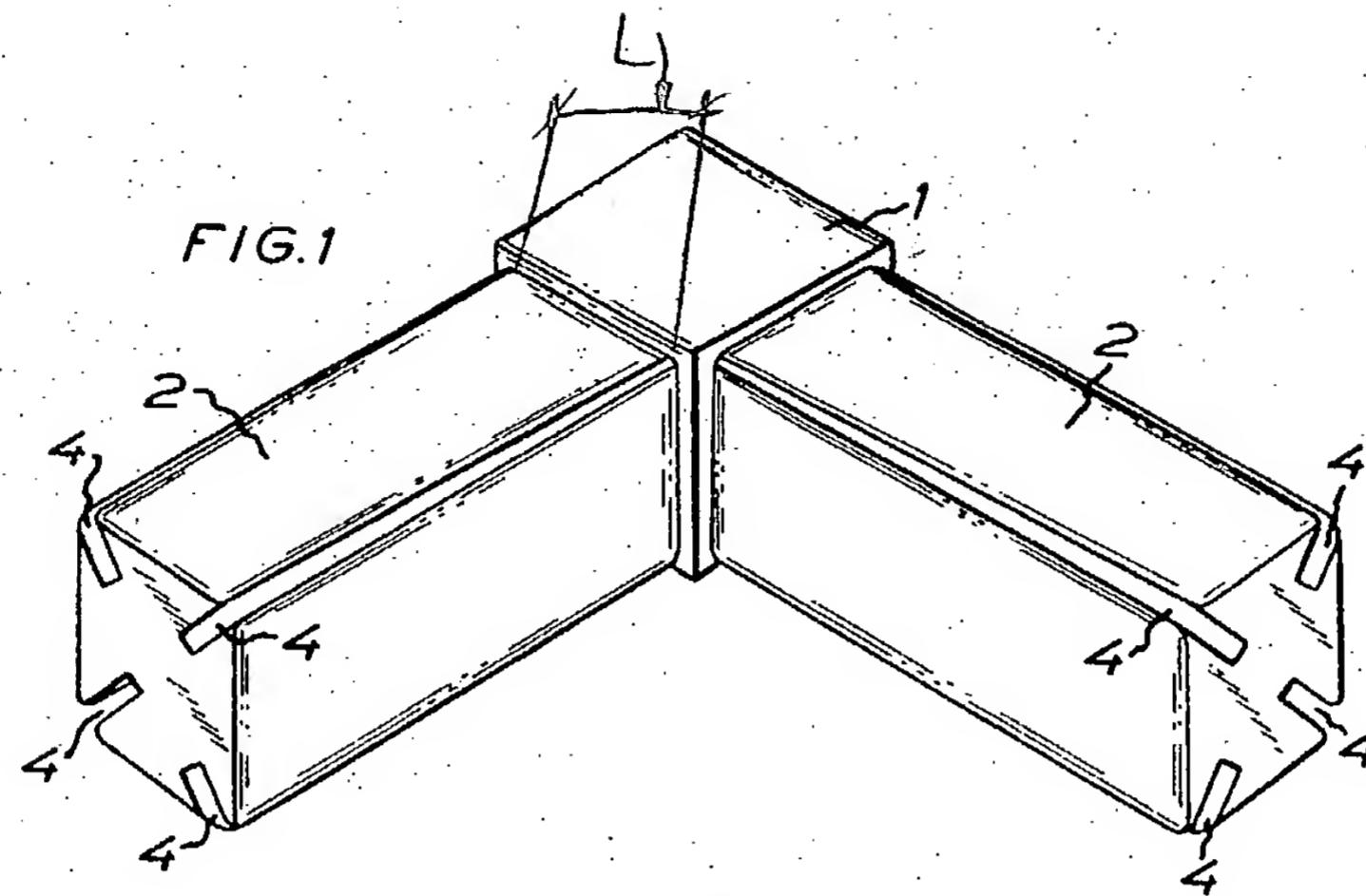


FIG. 2

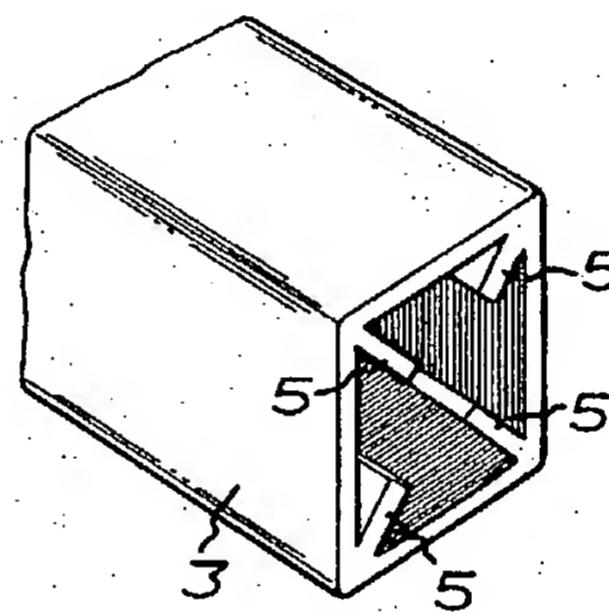
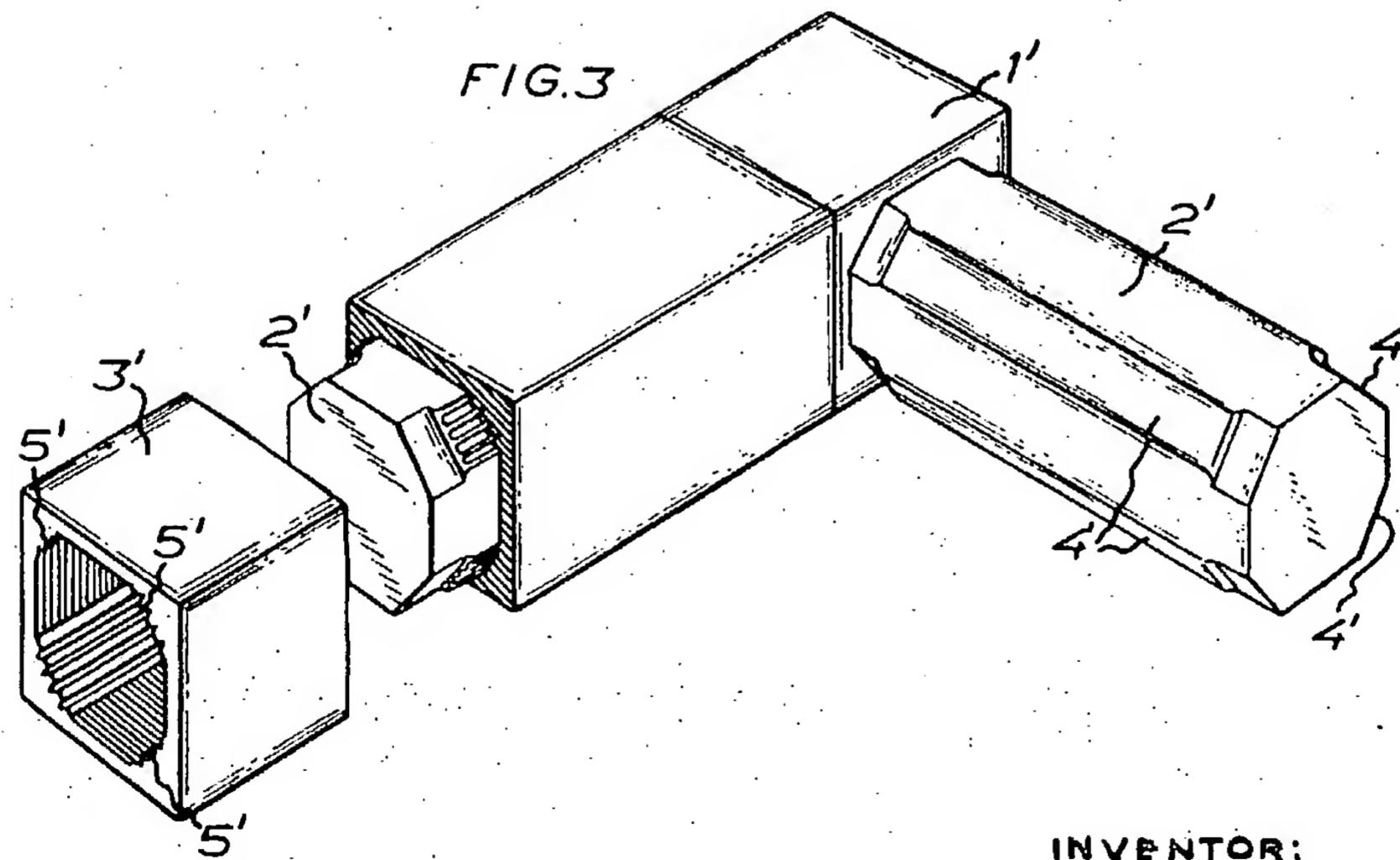


FIG. 3



INVENTOR:  
ADRIAN GOTTFRIED OFFENBROICH

by  
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